

On May 10, 2021, Defendants Burleson County and John Bennett filed their Motion for Summary Judgment, including asserting a qualified immunity defense on behalf of Defendant Bennett. [Doc. 60] Defendant City of Caldwell also filed a Second Renewed Motion to Dismiss and Motion for Summary Judgment on that date. [Doc. 58]

Plaintiffs requested a 90-day extension of time to respond to the pending motions, which was opposed by Defendants. Consideration of the Motion was referred to Magistrate Judge Lane who granted Plaintiffs until June 16, 2021 to respond to the pending motions. [Doc. 67] On June 17, 2021, a text order was entered referring consideration of Defendants' Motions to Magistrate Judge Lane for consideration.

Plaintiffs responded to the Motions and Defendants filed their replies to the same, with all briefing complete by June 28, 2021. As of this time there has been no Report and Recommendation or other ruling from the Court with respect to the pending summary judgment motions, including Defendant Bennett's qualified immunity defense, and motion to dismiss.

On September 2, 2021, the Court issued an order setting the pretrial conference for this matter for September 17, 2021. [Doc. 72] This order activates certain deadlines under the Western District Local rules, specifically including the filing of certain materials fourteen and seven days prior to the hearing. Because the Order from yesterday set the pretrial conference on September 17, the triggered deadlines are thus today, September 3, 2021, and September 10, 2021.

II.

Advisory to the Court and Motion for Extension of Pretrial Filing Deadlines

Defendants wish to make the Court aware that there are pending Motions that remain outstanding at this time. The Court's ruling on these Motions could dramatically change the nature and landscape of this case, specifically including the parties involved, the causes of action to be tried, and the factual and legal matters relevant to the same. As such, the pretrial

filings necessary for this matter could also be dramatically altered, depending on the Court's ruling on the pending Motions.

Defendants would ask that the Court extend the deadline for the submission of the pretrial filings until the pending motions are ruled upon and the parties understand what the issues at trial will be before the parties incur the extensive time and expense on issues that may be moot or irrelevant to the ultimate case. The parties only received one day's notice of the initial deadline, a Friday before a holiday week-end when the parties and their attorneys are not fully staffed. Thus, at a minimum, Defendants ask that the deadline for today's filings be extended to until at least September 10, 2021.

Additionally, former Deputy Defendant Bennett has a qualified immunity defense pending as part of his dispositive motion. It is well settled that a qualified immunity defense "protects the official both from liability as well as from the ordinary burdens of litigation, including far-ranging discovery." *Harlow v. Fitzgerald*, 457 U.S. 800, 817-18 (1982)). Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation, conditioned on the resolution of the essentially legal [immunity] question." *Behrens v. Pelletier*, 516 U.S. 299, 306 (1996)(citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).

Defendant Bennett will additionally be entitled to an immediate appeal before submitting to a jury trial if immunity is denied. *Mitchell*, 472 U.S. at 530 ("a district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable 'final decision' within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment."); *see also, In Helton v. Clements*, 787 F.2d 1016, 1017 (5th Cir. 1986)(extending the *Mitchell* ruling to apply to a district court's refusal to rule on a claim of qualified immunity until trial).

As such, while there was no discovery during the course of this litigation that necessitated a stay request, Defendant Bennett in particular should not be compelled to submit the extensive materials required under the pretrial filings requirements, until his qualified immunity defense is ruled upon.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray this Court extend the pretrial filing requirements until the pending Motions for Summary Judgment and Motion to Dismiss are ruled upon, and for such other and further relief to which these Defendants may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

In accordance with Federal Rules, Defendants certify they consulted with counsel for Plaintiffs and she is opposed to this Motion.

/s/ Joanna Lippman Salinas
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Defendants' Advisory and Motion for Extension of Pretrial Filing Deadlines** has been provided to the offices of:

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via electronic service in accordance with the Federal Rules of Civil Procedure, on September 3, 2021.

/s/Joanna Lippman Salinas
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